

REMARKS

This paper responds to the Final Office Action mailed on December 26, 2008. No claims have been amended, canceled, or added. Therefore, claims 1-32 remain pending in the application.

Rejections under 35 U.S.C. §102(b)

On page 2 of the Office Action, the Examiner rejected claims 1-32 under 35 U.S.C. §102(b) as being anticipated by *Auction Arms* (Reference U, PTO-892). Since not all elements of Applicants' claims are taught in *Auction Arms*, Applicants respectfully traverse.

In order to anticipate a claim, a reference must teach all limitations, arranged or combined in the same way as recited in Applicants' claim. The Court of Appeals for the Federal Circuit recently held

[U]nless a reference discloses within the four corners of the document *not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim*, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102." (*Net MoneyIn, Inc. v. Verisign, Inc.*, No. 2007-1565 at 17. (Fed. Cir. Oct. 20, 2008.) Emphasis added.)

Independent Claims 1, 9, 17, and 25

Because *Auction Arms* fails to disclose all limitations of independent claims 1, 9, 17, and 25, these claims are not anticipated, and are thus novel. In particular, claim 1 recites, *inter alia*,

[A] fixed price-setting process executed from the memory by the processor to:

determine that a high proxy bid is less than a reserve price, wherein the high proxy bid is the highest current proxy bid and the reserve price is the minimum price at which a seller is willing to sell an item, and

in response to the determining, cause the processor to automatically publish at least one of a proxy bid information set by a proxy bidder and the reserve price, wherein the proxy bid information includes the highest price that the proxy bidder is willing to pay for the item. (Emphasis added.)

Applicants' other independent claims, 9, 17, and 25, each contain similar limitations.

In contrast, *Auction Arms* merely discusses operations of their on-line auction system for firearms. Specifically, with regard to reserve prices and proxy bids, *Auction Arms* discusses,

We actually run a Modified Reserve Style auction. We differentiate from a traditional Reserve Style auction in that *our proxy bidding doesn't kick in until after the Seller's reserve price has been met*. All bids placed lower than the Seller's reserve price are in the open and visible for everyone to see. *After the Seller's reserve has been met, proxy bidding kicks in and Max bids are kept hidden* while proxy bids placed by the computer and bids beaten by a proxy bid are displayed. (*Auction Arms* at 7. Emphasis added.)

Auction Arms further emphasizes, "**WARNING: PROXY BIDDING DOES NOT KICK IN ON RESERVE AUCTIONS UNTIL AFTER THE RESERVE HAS BEEN MET.**" (*Auction Arms* at 8. Emphasis in original.) Thus, only after a reserve price has been met are proxy bids considered.

Consequently, since proxy bids are not even considered until the reserve price has been met, then no determination is made that a proxy bid is less than the reserve price as recited by each of Applicants' independent claims. Moreover, no disclosure or even hint exists within *Auction Arms* of "automatically publish[ing] at least one of a proxy bid information set by a proxy bidder and the reserve price" as recited by Applicants' independent claims.

Since Applicants have shown that not all the claimed limitations were known as required by the *Net MoneyIn* court, Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. §102(b) with regard to independent claims 1, 9, 17, and 25.

Dependent Claims 2-8, 10-16, 18-24, and 26-32

Further, since claims 2-8, 10-16, 18-24, and 26-32 depend, either directly or indirectly from claims 1, 9, 17, or 25, they too are allowable for at least the same reasons. Further claims 2-8, 10-16, 18-24, and 26-32 each may be allowable for its own limitations.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned representative at (408) 660-2015 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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By


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 26, 2009.

HAVIS BANKY
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CBM
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